Supreme Court, U.S.
FILED
JUN 22 2001
CLERK

No. 00-1643

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, PETITIONER

vs.

HENRY ALEXANDER JONES, RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent/Defendant, by his undersigned counsel, requests leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, without prepayment of costs and to proceed in forma pauperis. Counsel was appointed for Defendant on appeal under the Criminal Justice Act, 18 U.S.C. § 3006A(b).

This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

Dated: June 22, 2001

Jerald L. Brainin
Counsel for Respondent

No. 00-1643

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, PETITIONER

vs.

HENRY ALEXANDER JONES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING OF PETITION FOR WRIT OF CERTIORARI

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Attorney for the Respondent
Henry Alexander Jones

OPINION BELOW

The decision of the court of appeals is unpublished, but the decision is available at 2001 WL 66244.

JURISDICTION

The judgment of the court of appeals was entered on January 26, 2001. This court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Respondent agrees with Petitioner that this case presents the same issues that are currently pending before the Court in *United States v. Vonn*, cert. granted, 121 S.Ct. 1185 (2001)(No. 00973), and that the Court should defer further disposition pending its resolution of the *Vonn* case. Cert. Pet. 7-8.

ARGUMENT

Although the issues in both cases are identical, one procedural discrepancy bears mentioning. Respondent disagrees with the Circuit Court's and government's claim that "In its brief and at oral argument the government made it clear that it does not believe harmless error is the proper standard of review." Pet. App. at 2a, fn. 3; Cert. Pet. 6. Although this point

was mentioned during oral argument, the government did not raise or argue it in its brief. Pet. C.A. Br. at 16-22. Nowhere in the brief does the government contend that the court of appeals should evaluate Rule 11(c)(3) errors raised for the first time on appeal for plain error under Federal Rule of Criminal Procedure 52(b), rather than for harmless error under Rule 11(h). The government in fact argued that the court of appeals should evaluate Rule 11(c)(3) errors for harmlessness. *Id.*

Respectfully submitted,

Dated: June 22, 2001

JERALD BRAININ
Attorney for Respondent

No. 00-1643

IN THE

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UNITED STATES OF AMERICA, PETITIONER

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HENRY ALEXANDER JONES, RESPONDENT

CERTIFICATE OF SERVICE

I, Jerald Brainin, hereby certify that on this ___ day of June, 2001, I mailed a copy of the Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, counsel for the Petitioner. All postage was prepaid.

Respectfully submitted,

Dated: June 23, 2001

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HENRY ALEXANDER JONES